

United States
Court of Appeals
for the Ninth Circuit

ELLEN MOLNAR, Appellant,
vs.

NATIONAL BROADCASTING COMPANY,
INC., a corporation, Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

FILED

JUN 20 1955

PAUL P. O'BRIEN, CLERK



No. 14712

United States
Court of Appeals
for the Ninth Circuit

ELLEN MOLNAR, Appellant,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM R. LUND,
WM. JEROME POLLACK,
VIVIAN M. FELD,

6361 Wilshire Boulevard,
Los Angeles 48, California.



In the United States District Court for the Southern District of California, Central Division

No. 17853-WM

ELLEN MOLNAR,

Plaintiff,

vs.

NATIONAL BROADCASTING COMPANY,
INC., a corporation, DOE 1-X, Defendants.

COMPLAINT

(Damages for Personal Injuries)

Plaintiff complains of defendants above named and each of them as follows:

I.

The true names or capacities, whether individual, corporate, associate or otherwise, of defendants Doe 1-X are unknown to plaintiff who therefore sues said defendants by such fictitious names. When the true names and capacities of such fictitiously designated defendants are ascertained, plaintiff will ask leave of court to amend this complaint to insert said true names and capacities, together with the proper charging allegations. Plaintiff is informed and believes and thereon alleges that each of the defendants sued herein as a Doe is responsible in some manner for the events and happenings herein referred to, and caused injury and damages proximately thereby to the plaintiff as herein alleged.

II.

Plaintiff is a citizen and resident of the State

of California; defendants, and each of them, are citizens and residents of the State of Delaware.

III.

This is an action wholly between citizens of different states involving an amount in controversy in excess of \$3,000.00, exclusive of interest and costs.

IV.

Defendant National Broadcasting Company, Inc., a corporation, is now, and at all times mentioned herein, was a corporation organized and existing under and by virtue of the laws of the State of Delaware and authorized to do and engaged in doing business in the State of California.

V.

At all times herein mentioned, defendants, and each of them, owned, operated, managed and controlled that certain building and premises located on the northeast corner of the intersection of Sunset Boulevard and Vine Street, in the City of Los Angeles, County of Los Angeles, State of California, and in particular a stairway, leading to said premises near the Sunset and Vine entrance thereto.

VI.

On or about May 21, 1954, plaintiff was on said premises and was using the said stairway.

VII.

At said time and place the defendants, and each of them, so negligently and carelessly maintained,

operated, managed and controlled said stairway that the same was in a dangerous, unsafe and defective condition, thereby causing plaintiff to fall and to be hurled to the ground, thereby proximately sustaining the injuries and damages as hereinafter alleged.

VIII.

As a direct and proximate result of the aforesaid negligence and carelessness of the defendants, and each of them, the plaintiff was permanently hurt and injured in her health, strength and activity, sustaining severe shock and various injuries to her person, all of which said injuries have caused and continue to cause plaintiff great mental, physical and nervous pain and suffering, and which said injuries the plaintiff is informed and believes and thereon alleges will result in permanent disability to the said plaintiff, all to her damage in the sum of \$35,000.00.

IX.

As a direct and proximate result of the aforesaid negligence and carelessness of the defendants, and each of them, the plaintiff was compelled to and did employ physicians and surgeons to examine, treat and care for her and did incur medical and hospitalization expenses and incidental expenses and plaintiff is informed and believes and therein alleges that plaintiff will necessarily by reason of said injuries require additional doctor and medical care and incidental expenses.

Wherefore, plaintiff prays for judgment against defendants and each of them as follows:

1. For general damages in the sum of \$35,000.00;
2. For all doctor, hospitalization, medical and incidental expenses according to proof;
3. For costs of suit.
4. For such other and further relief as to the court may seem proper.

/s/ WM. JEROME POLLACK,
Attorney for Plaintiff

Plaintiff also demands a jury trial of the above entitled matter and that the same be tried before a jury.

/s/ WM. JEROME POLLACK,
Attorney for Plaintiff

[Endorsed]: Filed February 8, 1955.

In the United States District Court for the Southern District of California, Central Division

No. 17853-WM—Civil

ELLEN MOLNAR,

Plaintiff,

vs.

NATIONAL BROADCASTING COMPANY,
INC., a corporation, DOE I-X, Defendants.

**ORDER DISMISSING ACTION FOR WANT
OF JURISDICTION OVER THE SUBJECT
MATTER**

It appearing to the Court:

(1) that the record in this cause does not disclose complete diversity of citizenship between the parties [28 U.S.C. § 1332; Indianapolis vs. Chase National Bank, 314 U.S. 63, 69-70, 76-77 (1941); Parker vs. Overman, 18 How. (59 U.S.) 137, 141 (1855); Mullen vs. Torrance, 9 Wheat. (22 U.S.) 537, 538 (1824)];

(2) that there is no claim or cause of action asserted in the complaint which "arises under the Constitution, laws or treaties of the United States" [28 U.S.C. § 1331; Gully vs. First National Bank, 299 U.S. 109, 112-114 (1936); Puerto Rico vs. Russell & Co., 288 U.S. 476, 483-484 (1933); Hooe vs. United States, 218 U.S. 322, 335-336 (1910); Scribner vs. Straus, 210 U.S. 352 (1908); Wade vs. Lawder, 165 U.S. 624 (1897); Dale Tile Mfg. Co. vs. Hyatt, 125 U.S. 46 (1888); Republic Pictures Corp. vs. Security etc. Bank, 197 F.2d 767 (9th Cir. 1952)];

(3) that inasmuch as facts requisite to federal jurisdiction [Fed. Rules Civ. Proc., Rule 8(a)(1), 28 U.S.C.A. 252 (1950)] do not affirmatively appear [Robertson vs. Cease, 97 U.S. 646, 648-650 (1878); Ex Parte Smith, 94 U.S. 455, 456 (1876)], this court of limited jurisdiction [Shamrock Oil Co. vs. Sheets, 313 U.S. 100, 108-109 (1941)] presumably lacks jurisdiction of the cause [Bors vs. Preston, 111 U.S. 252, 255 (1884); Grace vs. American Central Ins. Co., 109 U.S. 278 (1883); Turner vs. Bank of North America, 4 Dall. (4 U.S.) 7, 11 (1800); New York Life Ins. Co. vs. Kaufman, 78 F.2d 398, 400 (9th Cir. 1935)];

It Is Ordered upon the Court's own initiative [Fed. Rules Civ. Proc., Rule 12(h), 28 U.S.C.A.] that the action is hereby dismissed for lack of jurisdiction over the subject matter [Fed. Rules Civ. Proc., Rule 12(b)(1), 28 U.S.C.A.].

It Is Further Ordered that this dismissal shall not operate as an adjudication upon the merits [Fed. Rules Civ. Proc., Rule 41(b), 28 U.S.C.A.].

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

February 10, 1955.

/s/ WM. C. MATHES,
United States District Judge

[Endorsed]: Judgment docketed and entered
February 11, 1955.

[Endorsed]: Filed February 11, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Ellen Molnar, plaintiff in the above entitled matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and judgment entered in this action on February 11, 1955, dismissing said action for want of jurisdiction over the subject matter.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff

[Endorsed]: Filed March 11, 1955.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS

Appellant, plaintiff in the above entitled action, intends to rely upon the appeal of the above entitled action upon the following points:

1. That the court erred in dismissing said action for want of jurisdiction of the subject matter thereof;
2. That the court has jurisdiction of this matter in that it involves an action wholly between citizens of different states and an amount in controversy in excess of \$3000.00, exclusive of interest and costs.

Dated: March 10, 1955.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff

[Endorsed]: Filed March 11, 1955.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD

To the Clerk of the United States District Court
for the Southern District of California, Central
Division:

Appellant, Ellen Molnar, named in the notice of appeal filed on March 11, 1955, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal to the United States Court of Appeals for the Ninth Circuit:

1. Complaint for personal injuries;
2. Order and judgment dismissing action for want of jurisdiction over subject matter, docketed and entered on February 11, 1955.

Dated: March 11, 1955.

/s/ VIVIAN M. FELD,
Attorney for Plaintiff

[Endorsed]: Filed March 11, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 9 inclusive, contain the original Complaint:

Order Dismissing Action for Want of Jurisdiction Over the Subject Matter;

Notice of Appeal;

Appellant's Statement of Points Upon Which She Intends to Rely;

Appellant's Designation; all in said cause, which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 1st day of April, 1955.

[Seal] EDMUND L. SMITH,
Clerk
/s/ By THEODORE HOCKE,
Chief Deputy

[Endorsed]: No. 14712. United States Court of Appeals for the Ninth Circuit. Ellen Molnar, Appellant, vs. National Broadcasting Company, Inc., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 4, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14712

ELLEN MOLNAR,

Appellant,

vs.

NATIONAL BROADCASTING COMPANY,
INC., a corporation, et al., Appellee.APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORDTo the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Pursuant to Rule 17(6) of the rules of the United States Court of Appeals for the Ninth Circuit, Appellant, Ellen Molnar, hereby adopts the Statement of Points Upon Which She Intends to Rely heretofore filed with the United States District Court for the Southern District of California, Central Division, and constituting page 8 of the record herein, and hereby designates for printing the following documents on the following pages of the record docketed in the above entitled court:

1. Names and addresses of attorneys, page 1.
2. Complaint for personal injuries, pages 2 through 4.
3. Order and judgment dismissing action for want of jurisdiction, pages 5 through 6.
4. Notice of appeal, page 7.

5. Statement of points upon which appellant intends to rely, page 8.
6. Appellant's designation, page 9.

Dated: April 6, 1955.

/s/ WM. JEROME POLLACK,
Attorney for Appellant

[Endorsed]: Filed Apr. 7, 1955. Paul P. O'Brien,
Clerk.

